

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19647 of 2015

Arising Out of PS.Case No. -880 Year- 2014 Thana -WEST CHAMPARAN COMPLAINT District-
WESTCHAMPARAN(BETTIAH)

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1. Md. Haroon. S/o Late Menhdi Husain. Resident of vill.- Sansaraiya, P.S.- Mofasil Bettiah, Distt.- West Champaran.
 2. Md. Irshad @ Md. Irshad Ahmad. S/o Md. Haroon. Resident of vill.- Sansaraiya, P.S.- Mofasil Bettiah, Distt.- West Champaran.
 3. Nabi Rasool Mia. S/o Isuf Mian made accused in complaint as Nabiji Mian. S/o Late Habib Mian. Resident of vill.- Sansaraiya, P.S.- Mofasil Bettiah, Distt.- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Md. Mustaquim. S/o Late Menhdi Husain. Resident of vill.- Sansaraiya, P.S.- Mofasil Bettiah, Distt.- West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Parasmani

For the Opposite Party/s : Mr. Yogendra Kumar Singh(App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 28-07-2015 Heard learned counsel for the petitioners as well as learned Additional P.P. None appears on behalf of the learned counsel for the Opposite Party No. 2.

Learned counsel on behalf of the petitioners has prayed for quashing of order dated 17.11.2014 passed by Shri R.R. Sahai Judicial Magistrate, 1st class, West Champaran at Bettiah in connection with complaint case No. 880-C/2014 whereby and whereunder, petitioners have been summoned to face trial for an offence punishable under Sections 417, 423, 465 and 379 of the

I.P.C.

It has been alleged by the Opposite party No. 2 in complaint petition that the land bearing Khata No. 3, Khesra No. 2/2, area 3 Bigha 2 Katha 10 dhur belonged to Nabi Rasool, son of Insuf Mian, was purchased by the complainant from Bibi Kitaban, wife of Insuf Mian as well as Husnatara, his daughter in the year 1989 and since thereafter, the land happens to be under his possession. It has also been narrated that on the alleged date and time of occurrence, accused persons succeeded in stealthily cutting away one mango tree. It has further been incorporated in the complaint petition that accused persons got this land executed in their favour after impersonating Nabi Rasool.

Before advertng to the merit of the case, status of petitioner No. 3 is to be taken note of, firstly. In the complaint petition, the name of accused has been disclosed as Md. Irshad @ Md. Irshad Ahmad, son of Md Haroon, who happens to be petitioner no. 2. and Md. Haroon, son of late Mehndi Hussain petitioner No. 1 and one Nabiji Mian, son of late Habib Mian along with three and four unknown persons.

One Nabi Rasool, son of Insuf Mian came forward and encapsulate himself to be Nabiji Mian, son of late Habib Mian. Because of the fact that neither there happens to be dias name of

Naviji Mian in the complaint petition nor the order impugned identify such eventualities, on account thereof, status of petitioner no. 3 for the present is found, non entertainable and this petition with regard to petitioner No. 3, is found infructuous. In case, he is made an accused at the later part of proceeding, then in that event will have a cause to reagitate the matter.

Now coming to the status of remaining petitioners, it is apparent from the complaint petition itself that they have got a sale deed registered in their favour from Nabi Rasool, in whose name land stands. It is also apparent from Annexure-3 vide order dated 30.06.1999 passed by the then 6th Addl. Sessions Judge, West Champaran at Bettiah in Misc. Appeal No. 52/1997, that for declaration of the document having executed in favour of petitioners by Nabi Rasool, should be declared null and void, Title Suit No. 82/97 has been filed by Opposite Party No. 2 and that being so, it happens to be out and out a Civil nature which has purposely been introduced under banner of criminal proceeding. That being so, it happens to be misuse as well as abuse of process of the Court and comes within ambit of Section 482 of Cr. P. C. to being applicable to prevent abuse of the process as well as to secure the ends of justice.

Furthermore, the Hon'ble Apex Court in the case of

Rajib Ranjan & Others Vs. R. Vijay Kumar reported in **2015**

(1) SCC page 513 has held that in case the dispute relating to civil nature is colored as criminal prosecution, then, in that event, proceeding is fit to be quashed. That being so, the prosecution alongwith the order impugned, is quashed.

Accordingly, the petition is allowed.

(Aditya Kumar Trivedi, J)

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